DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Rockville MD 20857

FEB 17 2011

Re: ALAIR Bronchial Thermoplasty System
Docket No. FDA-2010-E-0663

The Honorable David J. Kappos
Under Secretary of Commerce for Intellectual Property
Director of the United States Patent and Trademark Office
Mail Stop Hatch-Waxman PTE
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Director Kappos:

This is in regard to the application for patent term extension for U.S. Patent No. 6,411,852 filed by Asthmatx, Inc., under 35 U.S.C. § 156. The medical device claimed by the patent is ALAIR Bronchial Thermoplasty System, which was assigned premarket approval application (PMA) No. P080032.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1).

The PMA was approved on April 27, 2010, which makes the submission of the patent term extension application on June 23, 2010, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the *Federal Register*, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely yours,

Jane A. Axelrad

Jane A. Axelrad
Associate Director for Policy
Center for Drug Evaluation and Research

cc: Paul T Parker
Perkins Cole LLP
Attorneys for Applicant, Customer No. 46844
P.O. Box 1247
Seattle, WA 98111-1247